

Application No.: 10/776,619
Response dated: December 28, 2005
Office Action dated: September 28, 2005

REMARKS/ARGUMENTS

Claims 1-19 are pending in the application. Claims 1-19 are rejected. Claim 2 has been amended to correct a typographical error.

Claims 18-19 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 7-8 and 17-19 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,370,454 to Moore (hereinafter "Moore"). Claims 1-19 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application No. 2001/0056359 to Abreu (hereinafter "Abreu"). Claims 10-14 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,714,893 to Busche et al. (hereinafter "Busche"). Claims 1-6, 15, and 16 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application No. 2004/0267608 to Mansfield Jr. (hereinafter "Mansfield"). Claims 7-9 and 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over a standard product recall. Claims 15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Busche. Claims 10-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over the "Tread Act" of Congress (Public Law 106-414-Nov. 1, 2000) (hereinafter "Tread Act"). Claims 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over section 12 of the Tread Act.

Claim Rejections Under 35 U.S.C. §112

Claims 18-19 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Office Action states that both claims 18-19 depend to claim "0" that does not exist. In the response to a non-compliant amendment filed on July 19, claims 18 and 19 are recited as depending on claim 17. In any event, these claims have not been amended since filing, and have

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always depended from claim 17. Consequently, Applicants do not understand the Examiner's rejection. Because claims 18 and 19 properly depend from claim 17, Applicants submit that this rejection is improper and should be withdrawn.

Claim Rejections Under 35 U.S.C. §102

Claims 7-8 and 17-19 were rejected under 35 U.S.C. §102(b) as being anticipated by Moore. Moore discloses a method and apparatus for the maintenance of mechanized equipment such as an automobile (*See Abstract*).

Moore fails to teach or suggest determining whether the instance relates to a previously undetected product defect, as recited in claims 7 and 17. These claims would affirmatively require determining whether an instance of product performance that fails a benchmark relates to a previously undetected product defect. This element is not present in Moore, nor has the Office Action cited to where in Moore this element may be present. Further, this element is not conditional, and thus would be present in either interpretation the Office Action chose to follow. The only claimed conditional element of these claims is to whether or not an alert is generated, not determining whether the instance is a previously undetected product defect.

Further, the Office Action misinterprets Applicant's argument as to why determining whether the instance is a previously undetected product defect is not inherent in Moore. As Moore is dealing only with a single product, it is not inherently necessary that Moore determine whether the instance is one of first impression. Applicant made no claim that the claims required that more than one product provide the product performance data, but merely pointed out that as

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Moore was only dealing with one product, such a determination was unlikely to occur and definitely not disclosed.

As Moore does not teach or suggest determining whether the instance relates to a previously undetected product defect, an element of claims 7 and 17 is not disclosed by Moore. Therefore, claims 7 and 17, and by their dependency claims 8-9 and 18-19, are not anticipated by Moore.

Claims 1-19 were rejected under 35 U.S.C. §102(b) as being anticipated by Abreu. Abreu discloses an automated system and method for communicating product information to consumers through a central computer using a distributed computer network.

Abreu fails to teach or suggest a recall operations system, storing data representing return, repair and service procedures to be followed to process a recall of defective products, as recited in claim 1.

The Office Action cites a passage from Abreu that states:

The GPI system 1 is also designed to acquire information from the user 90 which may be significant from a warning or recall standpoint. The GPI system 1 uses biological variables to determine if a certain UPI product has been consistently and temporally associated with an abnormal biological variable. In the case that hundreds of users using a certain drug PPS transfer biological variables consistent with abnormal heart rate, then the data meet the criteria for potential harmful effect of the drug PPS. This information can then, for example, be transferred to the RIS 60 as "drug PPS potentially implicated with abnormal heart rate". In this scenario the GPI system 1 acts as an auxiliary in the detection of harmful products. The same approach applies to the detection of a certain plant number or lot numbers causing widespread illness or injury. The information thus can be used for locating plants for inspection. The system 1 can also identify contaminated food before an outbreak occurs. The users can transmit information to the GPI system 1 about their symptoms and comments on the product such as labeling, appearance, questionable ingredients, and the like. When a certain number of users report similar symptoms after ingesting the same food, the GPI system 1 identifies a

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potential outbreak. The system GPI 1 then can transfer this information back to the RIS 60.

(Abreu, Paragraph 251).

The Office Action seeks to overcome the lack of data representing return, repair, and service procedures by classifying it as non-functional and assigning it no patentable weight. The return, repair, and service procedures are to be followed to process a recall of defective products, as recited in claim 1, and, hence, are functional and must be given patentable weight. Additionally, information such as where the user should go to get tested by a doctor and any other necessary information relating to new prescriptions clearly does not constitute return, repair and service procedures. Rather, Abreu is dealing with attending to the health of the customer, and correcting any damages caused to the customer by the faulty product, rather than fixing the product itself. Thus, an element of claim 1 is not disclosed by Abreu. Therefore, claim 1, and by their dependency claims 2-6, are not anticipated by Abreu.

Abreu fails to teach or suggest determining whether the instance relates to a previously undetected product defect and generating an alert if it is, as recited in claims 7 and 17. Again, the Office Action cites to paragraph 251 of Abreu, reproduced in its entirety above.

As previously stated, Abreu identifies a potential problem if the number of incidents reaches a certain level. Abreu does not determine whether an instance of product performance that fails a benchmark relates to a previously undetected product defect for the purpose of issuing an alert. While the Office Action hypothesizes that the limit of Abreu could be one, this limit is not found in Abreu, but rather exists only in the Office Action. Even in claims 8 and 18, where multiple instances of failures occur, this limitation is present and active, and indeed had to occur

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upon the first instance of such a bench mark failure before arriving at actions found in those claims. Thus, an element of claims 7 and 17 are not disclosed by Abreu. Therefore, claims 7 and 17, and by their dependency claims 8-9 and 18-19, are not anticipated by Abreu.

Abreu fails to teach or suggest regulating the terminal's access to recall repository data based upon the terminal's classified audience member type, as recited in claims 10 and 15.

The Office Action cites a passage from Abreu that states:

The information about products (codes and/or names) being used and stored in the central server 10 (or GPI), can be accessed only by the users of such products. They preferably are required to enter a proper identification and password. To further assure the confidentiality of the information about products being used, biometric identification devices such as iris scanners, retinal scanners, fingerprint readers, voice recognition systems, and the like can be used to verify the identity of the user before accessing the database of the central server 10 or using the IECLD 40. The biometric data system also can be used by users who are visually or hearing impaired. The central server 10 (or GPI) can continuously receive and/or acquire updates on products, with the new information about the harmful products immediately being transmitted to the unique user of such harmful products. A menu-type message can be generated with the most critical hazard placed first and with a decreasing order of severity presented when the message/warning is transmitted. Certain information, such as the cardiac effects of products being used, can be stored and thus the user has the option to store and index the particular information in the database of the central server 10 (or GPI) under his/her username, which enables the user to review products which are or were used that affect the heart, and this information can be transferred to the user's doctor as well.

(Abreu, Paragraph 142).

Excluding non-audience members from the product information is not classifying audience members by audience member-type, nor is it regulating that access based on that type. In Abreu, only one class of audience member exists and that class of audience member either has access or it does not. Further, the personal data of Company A or Customer X is hardly recall data, and its access is not regulated by audience member type. Rather, each member has access to its personal data and its personal data alone. Therefore, an element of claims 10 and 15 is not

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disclosed by Abreu. Therefore, claims 10 and 15, and by their dependency claims 11-14 and 16, are not anticipated by Abreu.

Claims 10-14 were rejected under 35 U.S.C. §102(e) as being anticipated by Busche. Busche discloses an enhanced concern indicator failure prediction system to predict possible product failures with automatic notification of people as well as systems (*See Abstract*).

Busche fails to teach or suggest regulating the terminal's access to recall repository data based upon the terminal's classified audience member type, as recited in claim 10.

The Office Action cites a passage from Busche that states:

Narrowcasting 440 distributes triggering data to subscribers. Narrowcasting is the technique of distributing pertinent information to the precise destinations that require this information. As contrasted with simply broadcasting information, this technique avoids overloading the destination with information that not immediately useful. For example, a tire distributor may desire to see failure information relating to his tire brands but would not be interested in failure information relating to the brake system. Subscribers may be systems 450, such as pagers, e-mail, or other automated systems. Subscribers may also be people. For example, a person may monitor for failures at user dashboard 452.

(Busche, Column 7, lines 12-24).

As the user is the one deciding what information the user will and will not receive, access to the information is not regulated. Nothing prevents every user from receiving all information if that is what is chosen by those users. Further, no distinction is made between members of the audience. Each member of the audience is allowed to receive whatever information that member wants. Thus, elements of claim 10 are not disclosed by Busche. Therefore, claim 10, and by their dependency claims 11-14, are not anticipated by Busche.

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Claims 1-6, 15, and 16 were rejected under 35 U.S.C. §102(e) as being anticipated by Mansfield. In Mansfield, a system for determining customer identifiers associated with purchase of product items which are recalled includes a computer database management system and network (*See Abstract*).

Mansfield fails to teach or suggest an early warning system, responsive to product performance data, to detect a pattern of product defects therefrom and generate an alert, as recited in claim 1.

Mansfield states:

In step 210, a manufacturer decides to recall. Preferably, the manufacturer determines the specification of the recall. Typically, the recall specification defines at least one product UPC, identifiable product items, geographic regions, time periods (*e.g.*, date ranges), retailers, and specific stores. The recall specification defines the scope of the recall and any data that accomplishes this goal may be used for this invention. It should be noted that identification of the product without any other limitations would indicate a general recall of all outstanding product items for that product.

(Mansfield, Paragraph 0024).

A manufacturer deciding to perform a recall is not an early warning system. No mention is made in Mansfield of the manufacturer detecting a pattern of product defects and generating an alert. Thus, an element of claim 1 is not disclosed by Mansfield. Therefore, claim 1, and by their dependency claims 2-6, are not anticipated by Mansfield.

Mansfield fails to teach or suggest regulating the terminal's access to recall repository data based upon the terminal's classified audience member type, as recited in claim 15 as amended. The Office Action argues that as the recall information is sent to everyone in a specific product group, the access is regulated by audience member type. Again, the product group is an audience and not an audience member type. Nobody outside that product group

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would be interested in that information. Access to the information is not based on audience member type in Mansfield. Therefore, claim 15, and by its dependency claim 16, are not anticipated by Mansfield.

Claim Rejections Under 35 U.S.C. §103(a)

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Claims 7-9 and 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over a standard product recall. Traditional product recall does not disclose determining whether an instance of product performance relates to a previously undetected product defect, and, if so, generating an alert, nor does it disclose performing this analysis with a computer.

This determination is never made in traditional product recall, with an alert generated on that basis. Moreover, the Office Action has provided no evidence beyond its own definitions to describe a "traditional product recall." As described in Section 2144.03(B) of the Manual of Patent Examining Procedure, general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection. The "benchmarks" to which the Examiner refers find no basis in actual product recall practice. Rather, those "benchmarks" amount to no more than the Examiner's unsupported supposition as to why a product might be recalled. Thus, an element of claims 7 and 17 is not

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disclosed. Therefore, claims 7 and 17, and by their dependency claims 7-9 and 18-19, are not obvious.

Claim 15 was rejected under 35 U.S.C. §103(a) as being unpatentable over Busche. As stated above, Busche does not teach or suggest classifying the individual participants as one of a predetermined number of audience member types. Busche merely determines whether one is a member of the audience. Busche does not distinguish between members of the audience.

The Office Action further states the "recall template" is non-functional descriptive material that does not get patentable weight. The claim states that the recall management agent is responsive to a recall protocol template, indicating that it is functional. Moreover, the recall template is not present in Busche. Further, the Office Action does not provide any art that discloses recording authenticated participants' receipt of the recall notification information in the recall repository. Thus, elements of claim 15 are not disclosed by Busche. Therefore, claim 15 is not obvious in view of Busche.

Claims 10-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Tread Act. The Office Action argues that the government is a product producer, listing a large list of government products and services. However, none of these products or services would be the subject of a recall under the Tread Act. Therefore, it is not reasonable to construe the government as a producer of products for purposes of this rejection and so Applicants submit that claims 10, and by their dependency claims 11-15, are not obvious.

Claims 17-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over section 12 of the Tread Act. The Tread Act does not disclose determining whether an instance of product performance relates to a previously undetected product defect, and, if so, generating an

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alert. The Tread Act is clearly not determining whether an instance was a first occurrence, and is just as clearly not performing any of these steps by a processing device. Thus, an element of claims 17 is not disclosed. Therefore, claims 17, and by their dependency claims 18-19, are not obvious.

For all the above reasons, the Applicant respectfully submits that this application is in condition for allowance. A Notice of Allowance is earnestly solicited.

The Examiner is invited to contact the undersigned at (408) 975-7500 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

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